

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-008245

04/10/2015

HONORABLE KATHERINE COOPER

CLERK OF THE COURT
D. Harding
Deputy

VAN E FLURY

VAN E FLURY
4009 W KIVA ST
LAVEEN AZ 85339

v.

MUTUAL OF OMAHA INSURANCE
COMPANY

KATHLEEN KAHN

MINUTE ENTRY

Courtroom ECB-514

10:00 a.m. This is the time set for oral argument. Plaintiff is present on his own behalf. Defendant is represented by counsel, Kathleen Kahn.

A record of the proceedings is made by audio and/or videotape in lieu of a court reporter.

Oral argument is held regarding Defendant's Motion for Summary Judgment filed on October 31, 2014.

IT IS ORDERED taking this matter under advisement.

10:47 a.m. Matter concludes.

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LATER:

Defendant's Motion is **GRANTED**. Plaintiff's Complaint seeks a declaratory order regarding the disability claim he made in 2011 under Defendant's long-term disability insurance policy. Plaintiff settled that claim nearly three years ago. It is undisputed that, on June 14, 2012, he signed a binding settlement and release agreement. Per that agreement, he expressly "release[d] and forever discharge[d]" Mutual "from any and all liability under its Policy / Certificate No. 877432-89 for or on account of any loss or disability due either directly or indirectly to any accident, sickness or disability occurring or commencing on or about the 21st day of June, 2011." (Agreement, Defendant's SOF 8.) He accepted the settlement amount as a compromise and "a bar to *any suit at law* or otherwise upon said policy on account of said sickness, injury or disability, or anything resulting therefrom." Id. *Emmons v. Superior Court In & For Cnty. of Maricopa*, 192 Ariz. 509, 512, 968 P.2d 582, 585 (App. 1998) (enforcing settlement agreement entered into between parties); *Dietz v. Lopez*, 179 Ariz. 355, 358, 879 P.2d 2, 5 (App. 1994) (Court of Appeals upheld summary judgment based on the plaintiff's settlement with the defendant's insurer following a motor vehicle accident); and *Lundy v. Airtouch Communications, Inc.*, 81 F. Supp. 2d 962 (D. Ariz. 1999) (district court granted summary judgment for employer on employee's retaliation claim based on release agreement the employee signed upon resigning from the company).

Plaintiff fails to demonstrate a genuine question as to the authenticity of the copy of the agreement produced by Defendant. Defendant's electronic copy is admissible pursuant to Rule 1003.

He further fails to present any admissible evidence controverting Defendant's Motion. Where the party moving for summary judgment makes a prima facie showing that no genuine issue of material fact exists, the burden shifts to the opposing party to produce sufficient competent evidence to show that there is an issue. *E.g., Echols v. Beauty Built Homes*, 132 Ariz. 498, 500, 647 P.2d 629, 631 (1982); *National Housing Industries, Inc. v. E.L. Jones Development Company*, 118 Ariz. 374, 377, 576 P.2d 1374, 1377 (App.1978). Plaintiff refers to his Complaint and submits two exhibits, a letter and a check, without a supporting affidavit or other appropriate foundation.

IT IS HEREBY ORDERED granting Defendant's Motion for Summary Judgment and dismissing Plaintiff's Complaint.